

# HOUSE BILL No. 1581

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 5-10.3; IC 21-38-3; IC 21-38-7-3.

**Synopsis:** Unfunded pension liabilities. Provides that if an entity, including a political subdivision, participates in the public employees' retirement fund (PERF) at the discretion of the entity and then takes an action that would restrict employee membership in PERF, the entity becomes liable for the future benefits payable to the entity's current and former employees. Provides that if an entity (other than a political subdivision) that has discretion to participate in PERF seeks to withdraw from PERF, the entity becomes liable for the future benefits payable to the entity's current and former employees. Eliminates an obsolete provision that is no longer applicable to governmental retirement plans under the Internal Revenue Code.

**Effective:** Upon passage.

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## Niezgodski

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January 20, 2015, read first time and referred to Committee on Employment, Labor and Pensions.

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First Regular Session of the 119th General Assembly (2015)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2014 Regular Session and 2014 Second Regular Technical Session of the General Assembly.

## HOUSE BILL No. 1581

A BILL FOR AN ACT to amend the Indiana Code concerning pensions.

*Be it enacted by the General Assembly of the State of Indiana:*

- 1 SECTION 1. IC 5-10.3-1-1.5 IS ADDED TO THE INDIANA  
2 CODE AS A **NEW** SECTION TO READ AS FOLLOWS  
3 [EFFECTIVE UPON PASSAGE]: **Sec. 1.5. "Discretionary entity"**  
4 **means an entity that:**  
5 **(1) may participate in the fund at the entity's discretion; and**  
6 **(2) is neither an individual nor a political subdivision.**  
7 SECTION 2. IC 5-10.3-2-4 IS ADDED TO THE INDIANA CODE  
8 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE  
9 UPON PASSAGE]: **Sec. 4. (a) As used in this section, "withdrawing**  
10 **discretionary entity" means a discretionary entity that takes an**  
11 **action described in subsection (b).**  
12 **(b) Subject to the provisions of this section, a discretionary**  
13 **entity may do the following:**  
14 **(1) Stop the discretionary entity's participation in the fund**  
15 **and withdraw all of the discretionary entity's employees from**



1 participation in the fund.

2 (2) If the discretionary entity is otherwise authorized to cover  
3 fewer than all of the discretionary entity's employees in the  
4 fund, withdraw a departmental, occupational, or other  
5 definable classification of employees from participation in the  
6 fund.

7 (3) Stop the discretionary entity's participation in the fund by:

8 (A) selling all of the discretionary entity's assets; or

9 (B) ceasing to exist.

10 (c) The withdrawal of a discretionary entity's participation in  
11 the fund is effective on a termination date established by the board.  
12 The termination date may not occur before all of the following  
13 have occurred:

14 (1) The withdrawing discretionary entity has provided written  
15 notice of the following to the board:

16 (A) The withdrawing discretionary entity's intent to cease  
17 participation.

18 (B) The names of the withdrawing discretionary entity's  
19 current employees and former employees as of the date on  
20 which the notice is provided.

21 (2) The expiration of:

22 (A) a ninety (90) day period following the filing of the  
23 notice with the board, for a withdrawing discretionary  
24 entity that sells all of the withdrawing discretionary  
25 entity's assets or that ceases to exist; or

26 (B) a two (2) year period following the filing of the notice  
27 with the board, for all other withdrawing participating  
28 entities.

29 (3) The withdrawing discretionary entity takes all actions  
30 required in subsections (d) through (g).

31 (d) With respect to retired members who have creditable service  
32 with the withdrawing discretionary entity, the withdrawing  
33 discretionary entity must contribute to the fund any additional  
34 amounts that the board determines are necessary to provide for  
35 reserves with sufficient assets to pay all future benefits from the  
36 fund to those retired members. The contribution by the  
37 withdrawing discretionary entity must be made in a lump sum or  
38 in a series of payments determined by the board.

39 (e) A member who is an employee of the discretionary entity as  
40 of the date of the notice under subsection (c) is vested in the  
41 pension portion of the member's retirement benefit. The  
42 withdrawing discretionary entity must contribute to the fund the



1 amount the board determines is necessary to fund fully the vested  
 2 benefit. The contribution by the withdrawing discretionary entity  
 3 must be made in a lump sum or in a series of payments determined  
 4 by the board.

5 (f) A member who is covered by subsection (e) and who is at  
 6 least sixty-five (65) years of age may elect to retire under  
 7 IC 5-10.2-4-1 even if the member has fewer than ten (10) years of  
 8 service. The benefit for the member shall be computed under  
 9 IC 5-10.2-4-4 using the member's actual years of service.

10 (g) With respect to members of the fund who have creditable  
 11 service with the withdrawing discretionary entity and who are not  
 12 employees as of the date of the notice under subsection (c), the  
 13 withdrawing discretionary entity must contribute the amount that  
 14 the board determines is necessary to fund fully the service for those  
 15 members that is attributable to service with the withdrawing  
 16 discretionary entity. The contribution by the withdrawing  
 17 discretionary entity must be made in a lump sum or in a series of  
 18 payments determined by the board.

19 SECTION 3. IC 5-10.3-2-5 IS ADDED TO THE INDIANA CODE  
 20 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE  
 21 UPON PASSAGE]: Sec. 5. (a) This section applies to a discretionary  
 22 entity that participates in the fund and takes any of the following  
 23 actions on or after December 31, 2010:

24 (1) The discretionary entity determines a date such that:

25 (A) each employee hired before the date is required or  
 26 allowed to participate in the fund; and

27 (B) each employee hired on or after the date is not allowed  
 28 to participate in the fund.

29 (2) The discretionary entity determines a date such that:

30 (A) each employee hired before the date is required to  
 31 participate in the fund; and

32 (B) each employee hired on or after the date is allowed to  
 33 choose to participate in a retirement plan other than the  
 34 fund.

35 (3) If the discretionary entity is otherwise authorized to cover  
 36 fewer than all of the discretionary entity's employees in the  
 37 fund, the discretionary entity determines a date:

38 (A) before which a departmental, occupational, or other  
 39 definable classification of employees is required or allowed  
 40 to participate in the fund; and

41 (B) on or after which the departmental, occupational, or  
 42 other definable classification of employees is not allowed to



- 1           participate in the fund.
- 2           (4) If the discretionary entity is otherwise authorized to cover
- 3           fewer than all of the discretionary entity's employees in the
- 4           fund, the discretionary entity determines a date:
- 5                (A) before which a departmental, occupational, or other
- 6                definable classification of employees is required to
- 7                participate in the fund; and
- 8                (B) on or after which the departmental, occupational, or
- 9                other definable classification of employees is allowed to
- 10              choose to participate in a retirement plan other than the
- 11              fund.
- 12           (5) If the discretionary entity is otherwise authorized to cover
- 13           fewer than all of the discretionary entity's employees in the
- 14           fund, the discretionary entity modifies its employee
- 15           classification scheme as of a specified date in such a way that
- 16           there is at least one (1) position that:
- 17                (A) is covered by the fund before the specified date; and
- 18                (B) is not covered by the fund after the specified date.
- 19           (b) The following definitions apply throughout this section:
- 20                (1) "Freeze" or "freeze participation in the fund" means to
- 21                take an action described in subsection (a).
- 22                (2) "Freezing discretionary entity" means a discretionary
- 23                entity that freezes its participation in the fund.
- 24           (c) A discretionary entity that freezes its participation in the
- 25           fund after December 31, 2010, shall do the following:
- 26                (1) Provide written notice of the following to the board:
- 27                    (A) The action described in subsection (a) that was taken
- 28                    by the freezing discretionary entity.
- 29                    (B) The effective date of the action described in subsection
- 30                    (a) that was taken by the freezing discretionary entity.
- 31                    (C) If the discretionary entity is otherwise authorized to
- 32                    cover fewer than all of the discretionary entity's employees
- 33                    in the fund, the employee classifications that:
- 34                        (i) are covered by the fund before the effective date of
- 35                        the freeze; and
- 36                        (ii) will not be covered by the fund on or after the
- 37                        effective date of the freeze.
- 38                    (D) The names of the freezing discretionary entity's
- 39                    current employees and former employees as of the date on
- 40                    which the notice is provided.
- 41                (2) Comply with subsections (d) and (e).
- 42           (d) With respect to retired members who have creditable service



1 with the freezing discretionary entity, the freezing discretionary  
 2 entity must contribute to the fund any additional amounts that the  
 3 board determines are necessary to provide for reserves with  
 4 sufficient assets to pay all future benefits from the fund to those  
 5 retired members. The contribution by the freezing discretionary  
 6 entity must be made in a lump sum or in a series of payments  
 7 determined by the board.

8 (e) With respect to members of the fund who have creditable  
 9 service with the freezing discretionary entity and who are not  
 10 employees as of the effective date on which the discretionary entity  
 11 freezes its participation in the fund, the freezing discretionary  
 12 entity must contribute the amount that the board determines is  
 13 necessary to fund fully the service for those members that is  
 14 attributable to service with the freezing discretionary entity. The  
 15 contribution by the freezing discretionary entity must be made in  
 16 a lump sum or in a series of payments determined by the board.

17 SECTION 4. IC 5-10.3-6-8 IS AMENDED TO READ AS  
 18 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 8. (a) As used in  
 19 this section, "withdrawing political subdivision" means a political  
 20 subdivision that takes an action described in subsection (b).

21 (b) Subject to the provisions of this section, a political subdivision  
 22 may do the following:

- 23 (1) Stop its participation in the fund and withdraw all of the
- 24 political subdivision's employees from participation in the fund.
- 25 (2) Withdraw a departmental, an occupational, or other definable
- 26 classification of employees from participation in the fund.
- 27 (3) Stop the political subdivision's participation in the fund by:
- 28 (A) selling all of the political subdivision's assets; or
- 29 (B) ceasing to exist as a political subdivision.

30 (c) The withdrawal of a political subdivision's participation in the  
 31 fund is effective on a termination date established by the board. The  
 32 termination date may not occur before all of the following have  
 33 occurred:

- 34 (1) The withdrawing political subdivision has provided written
- 35 notice of the following to the board:
- 36 (A) The withdrawing political subdivision's intent to cease
- 37 participation.
- 38 (B) The names of the withdrawing political subdivision's
- 39 current employees and former employees as of the date on
- 40 which the notice is provided.
- 41 (2) The expiration of:
- 42 (A) a ninety (90) day period following the filing of the notice



1 with the board, for a withdrawing political subdivision that  
 2 sells all of the withdrawing political subdivision's assets or that  
 3 ceases to exist as a political subdivision; or

4 (B) a two (2) year period following the filing of the notice with  
 5 the board, for all other withdrawing political subdivisions.

6 (3) The withdrawing political subdivision takes all actions  
 7 required in subsections (d) through ~~(h)~~: (g).

8 (d) With respect to retired members who have creditable service  
 9 with the withdrawing political subdivision, the withdrawing political  
 10 subdivision must contribute to the fund any additional amounts that the  
 11 board determines are necessary to provide for reserves with sufficient  
 12 assets to pay all future benefits from the fund to those retired members.  
 13 The contribution by the withdrawing political subdivision must be  
 14 made in a lump sum or in a series of payments determined by the  
 15 board.

16 (e) A member who is an employee of the political subdivision as of  
 17 the date of the notice under subsection (c) is vested in the pension  
 18 portion of the member's retirement benefit. The withdrawing political  
 19 subdivision must contribute to the fund the amount the board  
 20 determines is necessary to fund fully the vested benefit. The  
 21 contribution by the withdrawing political subdivision must be made in  
 22 a lump sum or in a series of payments determined by the board.

23 (f) A member who is covered by subsection (e) and who is at least  
 24 sixty-five (65) years of age may elect to retire under IC 5-10.2-4-1 even  
 25 if the member has fewer than ten (10) years of service. The benefit for  
 26 the member shall be computed under IC 5-10.2-4-4 using the member's  
 27 actual years of service.

28 (g) With respect to members of the fund who have creditable service  
 29 with the withdrawing political subdivision and who are not employees  
 30 as of the date of the notice under subsection (c), the withdrawing  
 31 political subdivision must contribute the amount that the board  
 32 determines is necessary to fund fully the service for those members that  
 33 is attributable to service with the withdrawing political subdivision.  
 34 The contribution by the withdrawing political subdivision must be  
 35 made in a lump sum or in a series of payments determined by the  
 36 board.

37 ~~(h) The board shall evaluate each withdrawal under this section to~~  
 38 ~~determine if the withdrawal affects the fund's compliance with Section~~  
 39 ~~401(a)(4) of the Internal Revenue Code of 1954, as in effect on~~  
 40 ~~September 1, 1974. The board may deny a political subdivision~~  
 41 ~~permission to withdraw if the denial is necessary to achieve compliance~~  
 42 ~~with Section 401(a)(4) of the Internal Revenue Code of 1954, as in~~



1 ~~effect on September 1, 1974.~~

2 SECTION 5. IC 5-10.3-6-8.2 IS ADDED TO THE INDIANA  
3 CODE AS A NEW SECTION TO READ AS FOLLOWS  
4 [EFFECTIVE UPON PASSAGE]: **Sec. 8.2. (a) The following**  
5 **definitions apply throughout this section:**

6 (1) "Freeze" or "freeze participation in the fund" means to  
7 take an action described under subsection (b).

8 (2) "Freezing political subdivision" means a political  
9 subdivision that freezes its participation in the fund.

10 (b) Subject to the provisions of this section, a political  
11 subdivision may do the following:

12 (1) Determine a date:

13 (A) before which a departmental, occupational, or other  
14 definable classification of employees is eligible to  
15 participate in the fund; and

16 (B) on or after which the departmental, occupational, or  
17 other definable classification of employees is not eligible to  
18 participate in the fund.

19 (2) Determine a date:

20 (A) before which a departmental, occupational, or other  
21 definable classification of employees is required to  
22 participate in the fund; and

23 (B) on or after which the departmental, occupational, or  
24 other definable classification of employees is allowed to  
25 choose whether to participate in a retirement benefit  
26 system other than the fund.

27 (3) Modify the political subdivision's employee classification  
28 scheme as of a specified date in such a way that there is at  
29 least one (1) position that:

30 (A) is covered by the fund before the specified date; and

31 (B) is not covered by the fund on or after the specified date.

32 (c) A political subdivision that freezes its participation in the  
33 fund after December 31, 2010, shall do the following:

34 (1) Provide written notice of the following to the board:

35 (A) The action that was taken under subsection (b) by the  
36 freezing political subdivision.

37 (B) The effective date of the action taken under subsection  
38 (b).

39 (C) The employee classifications that:

40 (i) are covered by the fund before the effective date of  
41 the freeze; and

42 (ii) will not be covered by the fund on or after the





effective date of the freeze.

(D) The names of the freezing political subdivision's current employees and former employees as of the date on which the notice is provided.

(2) Comply with subsections (d) and (e).

(d) With respect to retired members who have creditable service with the freezing political subdivision, the freezing political subdivision must contribute to the fund any additional amounts that the board determines are necessary to provide for reserves with sufficient assets to pay all future benefits from the fund to those retired members. The contribution by the freezing political subdivision must be made in a lump sum or in a series of payments determined by the board.

(e) With respect to members of the fund who have creditable service with the freezing political subdivision and who are not employees as of the effective date on which the political subdivision freezes its participation in the fund, the freezing political subdivision must contribute the amount that the board determines is necessary to fund fully the service for those members that is attributable to service with the freezing political subdivision. The contribution by the freezing political subdivision must be made in a lump sum or in a series of payments determined by the board.

SECTION 6. IC 21-38-3-3, AS AMENDED BY P.L.3-2008, SECTION 146, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 3. The board of trustees of Ball State University may define the duties and provide compensation for faculty and staff of the university. **Subject to IC 5-10.3-2-4 and IC 5-10.3-2-5**, the authority of the board under this section includes the authority to establish fringe benefit programs, including retirement benefits, that may be supplemental to, or instead of, state retirement programs for teachers or other public employees as authorized by law.

SECTION 7. IC 21-38-3-4, AS ADDED BY P.L.2-2007, SECTION 279, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 4. The board of trustees of Indiana University may:

(1) elect a president, the professors, and other officers for Indiana University as necessary and prescribe the duties and salaries of those positions;

(2) employ other persons as necessary; and

(3) **subject to IC 5-10.3-2-4 and IC 5-10.3-2-5**, establish programs of fringe benefits and retirement benefits for Indiana University's officers, faculty, and other employees that may be supplemental to, or instead of, state retirement programs



established by statute for public employees.

SECTION 8. IC 21-38-3-5, AS ADDED BY P.L.2-2007, SECTION 279, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 5. The board of trustees of Indiana State University may prescribe the duties and provide the compensation, including retirement and other benefits, of the faculty, administration, and employees of Indiana State University. **The authorization under this section to provide retirement benefits to the faculty, administration, and employees of Indiana State University is subject to IC 5-10.3-2-4 and IC 5-10.3-2-5.**

SECTION 9. IC 21-38-3-7, AS ADDED BY P.L.169-2007, SECTION 27, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 7. The board of trustees of Ivy Tech Community College may do the following:

- (1) Develop a statewide salary structure and classification system, including provisions for employee group insurance, employee benefits, and personnel policies.
- (2) Employ the chief administrator of each region.
- (3) Authorize the chief administrator of a region to employ the necessary personnel for the region, determine qualifications for positions, and fix compensation for positions in accordance with statewide policies established under subdivision (1).

**The authorizations under this section to provide for employee benefits and compensation are subject to IC 5-10.3-2-4 and IC 5-10.3-2-5.**

SECTION 10. IC 21-38-3-8, AS ADDED BY P.L.2-2007, SECTION 279, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 8. The board of trustees of Purdue University may elect all professors and teachers, removable at the board's pleasure; fix and regulate compensations, including programs of fringe benefits and retirement benefits that may be supplemental to or in lieu of state retirement programs established by statute for public employees. **The authorization to provide retirement benefits under this section is subject to IC 5-10.3-2-4 and IC 5-10.3-2-5.**

SECTION 11. IC 21-38-3-9, AS ADDED BY P.L.2-2007, SECTION 279, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 9. The University of Southern Indiana may employ a faculty and staff for the university, define the duties of the faculty and staff, and provide compensation for the faculty and staff, including a program of fringe benefits and a program of retirement benefits that may supplement or supersede the state



1 retirement programs established by statute for teachers or other public  
2 employees. **The authorization to provide retirement benefits under**  
3 **this section is subject to IC 5-10.3-2-4 and IC 5-10.3-2-5.**

4 SECTION 12. IC 21-38-3-11, AS ADDED BY P.L.2-2007,  
5 SECTION 279, IS AMENDED TO READ AS FOLLOWS  
6 [EFFECTIVE UPON PASSAGE]: Sec. 11. The board of trustees of  
7 Vincennes University may elect and appoint persons of suitable  
8 learning and talents to be president and professors of Vincennes  
9 University and, **subject to IC 5-10.3-2-4 and IC 5-10.3-2-5**, agree  
10 with them for their salaries and emoluments. The board of trustees shall  
11 appoint a president to preside over and govern Vincennes University.

12 SECTION 13. IC 21-38-7-3, AS ADDED BY P.L.2-2007,  
13 SECTION 279, IS AMENDED TO READ AS FOLLOWS  
14 [EFFECTIVE UPON PASSAGE]: Sec. 3. **Subject to IC 5-10.3-2-4**  
15 **and IC 5-10.3-2-5**, a state educational institution may establish a  
16 retirement benefit system for the employees of the state educational  
17 institution.

18 SECTION 14. **An emergency is declared for this act.**

